

ECKERSTROM, Presiding Judge.

¶1 Appellant Ruben Durazo was convicted after a jury trial of criminal trespass committed with a sexual motivation as defined in A.R.S. § 13-118. The trial court suspended the imposition of sentence and placed Durazo on probation for three years. As a condition of his probation, the court ordered Durazo to register as a sex offender. On appeal, he argues the state presented insufficient evidence to support the jury's finding that he committed the crime for sexual gratification.¹ We affirm.

¶2 “We view the facts in the light most favorable to upholding the jury's verdict.” *State v. Bocharski*, 218 Ariz. 476, n.2, 189 P.3d 403, 408 n.2 (2008). J., a university student, was studying at home on a night in October 2006, when she heard unfamiliar noises on her roof that she described as sounding like “pressure.” She called 911, turned off her bedroom light, and looked out her window but could not see anyone. Tucson police officer Matthew Faulk immediately responded to J.'s 911 call. When he arrived at J.'s residence, he saw a “shadowy figure” crouched on the ground in a walled area of the residence, near what the officer later discovered was J.'s bedroom window. The figure was wearing black clothing and a black hat and appeared to be a white or Hispanic male, who then jumped over the wall to a parking lot on the other side.

¶3 As Faulk ran around the house to the parking lot, he heard a vehicle door slam. Next, he saw a white minivan in the parking lot back up at a high rate of speed and

¹Section 13-118(C) provides: “For purposes of this section ‘sexual motivation’ means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.”

leave the lot. According to Faulk, the driver's physical appearance generally matched that of the person who had jumped the wall. Faulk was able to read the minivan's license plate number and relay it to a dispatch operator. After the vehicle was stopped by an officer who had heard the van's description and license plate number over her radio, Faulk identified the vehicle and the driver as the same he had seen. The officer who had initiated the traffic stop on Durazo's van observed a black ski mask, white rubber glove, and black hat on the front passenger seat of the van. She also observed two rubber gloves and a pair of pants with the belt still in them behind the driver's seat.

¶4 Detective Johnny Walker searched Durazo's van. He found men's underwear and a pair of pants behind the driver's seat and, also behind the driver's seat, a white shirt on top of a child's car seat. In a plastic bag in the backseat of the van, he found unopened condoms, a pair of latex gloves, and wads of tissue paper. On the front passenger seat, he found a homemade ski mask, baseball hat, another pair of latex gloves, and a pair of boxer shorts. The detective who collected the clothing Durazo had been wearing when he was stopped noted Durazo was not wearing underwear. A preliminary test for bodily fluids was "positive for the indication of semen" on both the inside left crotch area of the pants Durazo had been wearing and on two wads of tissue paper found inside the van.

¶5 Durazo was indicted for burglary and possessing burglary tools, and the state alleged the burglary was "committed for the purpose of sexual gratification" within the meaning of § 13-118. After the close of the state's evidence, Durazo moved for a judgment

of acquittal on all charges, except the lesser included offense of criminal trespass. His motion included the allegation that he had committed the crimes with a sexual motivation. The trial court denied the motion. The jury acquitted Durazo of burglary and possession of burglary tools but found him guilty of the lesser offense of criminal trespass, finding beyond a reasonable doubt that he had committed the trespass for the purpose of sexual gratification. Based on the jury's finding of sexual motivation, the court ordered Durazo to register as a sex offender as a condition of his probation. This appeal followed.

¶6 Durazo argues the state presented insufficient evidence to support the jury's finding that his offense was sexually motivated. We review the sufficiency of evidence de novo. *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993). In doing so, we determine whether there is substantial evidence supporting the conviction. *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). Substantial evidence is evidence from which a rational jury could have found guilt beyond a reasonable doubt. *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003); accord *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When reasonable persons can disagree about whether the evidence establishes a fact in issue, the evidence is substantial. *State v. McCurdy*, 216 Ariz. 567, ¶ 14, 169 P.3d 931, 937 (App. 2007).

¶7 Under § 13-118(A) and (B), in a prosecution for a nonsexual criminal offense, the state may allege and—if it does—must prove beyond a reasonable doubt, that the defendant committed the offense “with a sexual motivation.” As we have noted, an offense

is sexually motivated if “one of the purposes for which the defendant committed [it]” was for sexual gratification. § 13-118(C).

¶8 Here, the state presented evidence from which the jury reasonably could have found that Durazo committed the trespass, in whole or in part, for sexual gratification. The evidence indicated, albeit circumstantially, that Durazo was trespassing to spy on J. while she was studying. She heard noises consistent with his presence on the roof, which had multiple skylights. When Officer Faulk arrived a few minutes later, he saw Durazo, in dark clothing and a dark hat, crouched on the ground near her bedroom window. When officers stopped Durazo shortly thereafter, his clothing and items found in his car were consistent with recent sexually motivated activity: he was not wearing underwear, and a search of his van revealed two pairs of men’s underwear, latex gloves, condoms, and wadded up tissue paper that eventually tested positive for the presence of semen. *See State v. Anderson*, 128 Ariz. 91, 92-93, 623 P.2d 1247, 1248-49 (App. 1980) (defendant’s acts after molestation incident may be used to infer defendant’s intent at time of incident); *cf. Bible*, 175 Ariz. at 595, 858 P.2d at 1198 (fact defendant not wearing underwear when arrested was, *inter alia*, circumstantial evidence supporting molestation conviction); *State v. Taylor*, 127 Ariz. 527, 529, 622 P.2d 474, 476 (1980) (presence of semen on victim’s underwear supported sexual-assault allegation when defendant denied any sexual encounter). We conclude that the state presented substantial evidence that Durazo committed the criminal trespass with a sexual motivation. Consequently, the trial court did not err or abuse its discretion in ordering

Durazo to register as a sex offender. *See* A.R.S. § 13-3821(C) (trial court may require person who commits “an offense for which there was finding of sexual motivation” to register as a sex offender).

¶9 Affirmed.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge